IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 620 of 2002

to

FIRST APPEAL No 623 of 2002

with

CIVIL APPLICATION No 2328 of 2002
and
CIVIL APPLICATION No 2351 of 2002
and
CIVIL APPLICATION No 2353 of 2002
and
CIVIL APPLICATION No 2354 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ORIENTAL INSURANCE CO LTD.

Versus

SHANTILAL PURSHOTAMDAS JOSHI

Appearance:

1. First Appeal No. 620 & 621 of 2002 and C.As.
MR RK MISHRA for Petitioner No. 1
MR MAULIK J SHELAT for Petitioner No. 1
MR GIRISH D BHATT for Respondent No. 1-2 & 1-4
NOTICE UNSERVED for Respondent No. 3 & 5

First Appeal No. 622 of 2002
MR MAULIK J SHELAT for Petitioner
MR HASIM QURESHI for Respondent No. 1
NOTICE UNSERVED for Respondent No. 2

First Appeal No. 623 of 2002
MR MAULIK J SHELAT for Petitioner
MR RAUF K MANSURI for Respondent No. 1
NOTICE UNSERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 11/09/2003

ORAL COMMON JUDGEMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

1. These appeals are filed under Section 173 of the Motor Vehicles Act against the common judgment and award delivered by the Motor Accident Claims Tribunal (Main) at Himatnagar in 4 Motor Accident Claim Petitions, namely M.A.C.P. Nos. 162/1992, 163/1992, 323/1992 and 536/1992 dated 3rd November, 2001. Since these appeals arise from a common judgment of the M.A.C. Tribunal, we have heard them together and now they are being disposed of by this common judgment.

2. In a vehicular accident which took place on 28th January, 1992 at about 7.45 a.m. on the Himatnagar Highway 3 young lives have been lost and one person has sustained injuries.

2.1. It appears from the record that the victims were standing on the highway and were having a chat. At that time the offending vehicle, namely a truck bearing Registration No. HYJ 1325 driven by respondent no. 2 in a rash and negligent manner, knocked them down and caused fatal injuries to Jayeshbhai Shantilal Joshi, Sudhirkumar Natvarlal Chauhan and Rafikbhai Fakirmohmed

Saiyed and injuries to Shabbirali Fakirmohmed Saiyed. It is the case of the original claimants before the Tribunal that the victims were standing on the edge of the road. Deceased Rafikbhai at that time was having scooter bearing No. GTI 8614 and just before the unfortunate accident he had arrived at the spot from Gambhoi side with his brother Shabbirbhai. Since Sudhirbhai and Jayeshbhai were already standing there, Rafikbhai halted his scooter and they started having a chat without realising that within short time three out of four would be no more. It also appears that scooter owned by Rafikbhai was dragged upto a distance of 39 ft. from the point where the victims were standing. Since the accident took place on account of the negligent and rash driving of respondent no. 3, the dependents of the 3 deceased persons and the injured himself filed aforesaid claim petitions before the Tribunal.

2.2. In the proceedings the driver i.e. respondent no. 3 and owner of the truck involved in the accident were joined as opponents and so was the present appellant i.e. Oriental Insurance Co. being the insurer of the offending vehicle. So far present appellant is concerned, it has appeared through its advocate and resisted the claim petitions by filing written statement at Exh. 15. It also appears that respondent no. 3 i.e. opponent no. 1 of claim petitions had filed written statement at Exh. 13 wherein it has been averred that at the time of accident he was driving the offending vehicle in a moderate speed. However, at that time the deceased all of a sudden tried to cross the road without taking any care to see the movement of the traffic on the road and as a result of which he dashed with the vehicle and sustained fatal injuries. According to him, the incident had taken place solely due to negligence of the deceased.

2.3. So far the appellant is concerned, it has averred in its written statement that at the time when the accident took place, whether the offending vehicle was insured with it or not is required to be proved by the claimants. It is further averred that to show that the driver of the offending vehicle was having a valid licence, is the burden on the claimants which they are required to discharge. It has also disputed the monthly income of the victims. It is further averred that the accident happened because of the negligence on the part of the victims as they were all going on one scooter and when the offending vehicle neared them, the person driving the scooter lost control over it and as a result the scooter dashed with the truck resulting into the present accident.

2.4. The Tribunal framed issues in all the 4 petitions. However, in the judgment they were decided by common discussion of the evidence.

2.5. At the end of the proceedings, by aforesaid judgment, the Tribunal held that the offending truck was driven in a rash and negligent manner by respondent no. 3 and, therefore, the owner was held vicariously liable for the act of respondent no. 1 and the appellant being the Insurance Company of the offending vehicle, it was held liable to satisfy the award. It may be noted here that so far the victim of M.A.C.P. No. 323/1992 is concerned, the Tribunal held him liable for contributory negligence to the extent of 20% as in the opinion of the Tribunal he was the person driving the scooter.

2.6. After assessing the compensation to which the original claimants were entitled to in each case, the Tribunal awarded Rs.2,76,700/= to the claimants of M.A.C.P. No. 162/1992, Rs.2,00,000/= to the claimants of M.A.C.P. No. 163/1992, Rs.71,600/= to the claimants of M.A.C.P. No. 323/1992 and Rs.49,200/= to the claimants of M.A.C.P. No. 536/1992. The Tribunal later on issued a corrigendum to the said judgment and so far M.A.C.P. No. 323/1992 is concerned, it has awarded Rs.1,00,000/= to the claimants instead of Rs.71,600/=. The amounts were directed to be paid jointly and severally by the original opponents together with 9% interest from the date of the petitions till realization with costs.

3. It is against this judgment and awards passed in aforesaid M.A.C. Petitions, the appellant has preferred the present appeals. The original claimants of M.A.C.P. No. 323/1992 and M.A.C.P. No. 536/1992, who are contesting respondents of First Appeal Nos. 622 and 623 of 2002 have preferred cross objections which are also being disposed of by us by this judgment.

4. So far First Appeal No. 620 of 2002 arising from M.A.C.P. No. 162 of 1992 is concerned, the parents of deceased Jayeshbhai have approached the Tribunal for claiming compensation. According to them, Jayeshbhai was working as Instructor in Electronics Department of Excel Udyog Vidyalay at Himatnagar. According to them, he was drawing salary of Rs.2,700/= p.m. and the salary was likely to be doubled with the passage of time. However, due to untimely death of Jayeshbhai they have been rendered destitute and they are

required to be compensated for the loss suffered by them. So far the claimants of M.A.C.P. No. 163 of 1992 i.e. the contesting respondents of First Appeal No. 621 of 2002 are concerned, they are the parents and younger sister of the deceased. According to them, deceased Sudhirbhai was studying in the Electronics Department of Excel Udyog Vidyalay. He was also doing the repairing work of television, radio, etc. and was earning income of s.1500/= to Rs.2000/- p.m. He was aged 20 years. So far M.A.C.P. No. 323 of 1992 is concerned, it has been filed by the mother of the deceased. According to her, her deceased son was aged 22 years and was painter of sign boards and he was generating income of Rs.3,500/= p.m. So far M.A.C.P. No. 536/1992 is concerned, it is filed by the injured himself contending that he was also doing the work of painting signboards, etc. and due to the permanent disability suffered to the extent of 5% he has not been able to do the work properly and during the time he was having treatment, he has suffered economic loss. On the aforesaid basis, the claimants have claimed Rs.3 lacs in each of the first 3 petitions i.e. M.A.C.P. Nos. 162/1992, 163/1992 and 323/1992 and Rs.2 lacs in M.A.C.P. No. 536/1992.

5. We have heard Mr. Shelat, learned advocate for the appellant and Mr. G.D. Bhatt and Mr. Hakim, learned advocates for the respondents i.e. the original claimants of the aforesaid petitions. Mr. Shelat has contended that the accident has taken place on account of the negligence of the deceased of M.A.C.P. No. 323/1992 and he has already been held liable of negligence to the extent of 20% by the Tribunal. In view of the same, according to him, the other could also be held liable for negligence to that extent because they all were travelling on one scooter. He has further submitted that the documentary evidence in the form of First Information Report lodged before the police completely supports this version. So far the quantum is concerned, according to Mr.Shelat, it is on a higher side and it is required to be reduced. He has submitted that the Tribunal has erroneously assessed income of the deceased on a higher side and that is required to be reduced. So far the award made in M.A.C.P. No. 163/1992 is concerned, he has submitted that except the oral contention raised regarding income of the deceased, there was no cogent evidence on record to show that he was earning Rs.1500/= to Rs.2,000/= p.m. He has further submitted that considering the fact that the deceased was studying in the technical institute, it is highly improbable that he was generating income of Rs.2,000/= p.m. So far M.A.C.P. No. 323/1992 is concerned, he has

submitted that the multiplier applied by the Tribunal of 12 years is not proper because atleast at the time of giving evidence before the Tribunal the age of the claimant was around 59 years and, therefore, the correct multiplier was of 8. So far the award made in M.A.C.P. No. 536/1992 is concerned, no serious challenge has been raised by Mr. Shelat. Even Mr. Hakim accepts the award and does not press his cross objections.

5.1. As against that, Mr. G.D. Bhatt and Mr. Hakim have submitted that the aspects of income as well as application of multiplier have been properly dealt with by the Tribunal and no interference is required to be made by this Court. They have further submitted that so far the loss of dependency benefit is concerned, the approach of the Tribunal is very conservative and considering the facts and circumstances on record the Tribunal could have assessed the income at a higher figure. So far Mr. Hakim is concerned, he has submitted that the finding of the Tribunal with regard to the contributory negligence of the deceased of M.A.C.P. No. 536/1992 is concerned, it is absolutely erroneous and it is required to be set aside. According to him, there was no evidence worth the name on record to show that the deceased was driving the scooter carrying with him the other victims and that in doing so he lost his balance resulting into the present accident.

6. We have carefully gone through the record and proceedings of the case and in particular the evidence adduced before the Tribunal and we have also taken into consideration the rival submissions.

6.1. First we may deal with the case of M.A.C.P. No. 162/1992 i.e. First Appeal No. 620/2002. From the record it clearly appears that the deceased was aged 22 years and at the relevant time he was working as the Instructor in Electronic department in Excel Udyog Vidyalay. It is the case of the claimants that he was drawing salary of Rs.2,700/= p.m. and that salary was likely to be doubled in due course of time. In support of their say, the Principal of Excel Udyog Vidyalay has been examined at Exh. 38. He has stated in his evidence that in December 1991 the deceased was paid Rs.2,028/=. Since the said witness is silent on the aspect of future prospects of deceased coupled with the fact that he had not produced any supporting evidence to show what salary was being paid to the deceased, the Tribunal has come to the conclusion that the salary of the deceased was Rs.1,800/= p.m. The Tribunal has not accepted the version of the claimants that he was earning Rs.2,700/=

and that he was also deriving income atleast of Rs.1,500/= p.m. by repairing television, radio, etc. On the basis of salary of Rs.1,800/= the Tribunal has awarded Rs.2,59,200/=. It has further held that the claimants were also entitled to receive Rs.15,000/= for loss of expectation of life and Rs.2,500/= towards funeral expenses. Thus, it has awarded Rs.2,76,700/=. It may be noted here that by issuing corrigendum the Tribunal has stated that in place of Rs.1,800/=, Rs.2,700/= was to be read and accordingly correction to that effect has been made. It may be also noted here that since the age of the parents was not more than 50 years, multiplier of 12 was applied. Mr. Shelat has drawn our attention to the fact that the datum figure in the present case would be Rs.4,050/= and the 1/3rd of the same would be Rs.1,350/=. As against that, the learned Tribunal has committed error by determining the loss to the family at Rs.1,800/=. There is much substance in the submission of Mr. Shelat. It clearly appears that the Tribunal has committed error even in the corrigendum to the judgment issued by it subsequently. It obviously appears that the figure arrived at by the Tribunal is erroneous and the loss of dependency benefit should have been determined at Rs.1,350/=. However, if the overall picture of the income and loss of dependency is seen in the present case, the ultimate figure arrived at by the Tribunal regarding the compensation which could be awarded to the claimants is just and proper. We have a reason to say this because in our opinion, the multiplier of 12 applied by the Tribunal is on lower side considering the fact that the mother of the deceased was aged 45 years. If that be so, she could well be covered under the bracket of 40 years to 45 years as appearing in Schedule-2 to Section 163-A and that can be taken as guiding factor. Thus, if the multiplier of 15 is applied, the difference between the amount actually awarded and the amount calculated on the basis of Rs.1,350/= would be hardly between Rs.15,000/= to Rs.16,000/=. In that view of the matter, we are not inclined to disturb the amount of compensation already determined by the Tribunal.

6.2. We may now turn our attention to the compensation determined by the Tribunal in M.A.C.P. No. 163/1992 i.e. First Appeal No. 621/2002. According to the claimants, the deceased was aged 20 years at the time of accident and he was studying in Electronic Department of Excel Udyog Vidyalay. It is further stated that he was generating income of Rs.1500/= to Rs.2000/= by doing television repairing work. It was, therefore, averred that with the passage of time, his income would have

increased to Rs.4,000/= and the compensation is to be determined on the said basis. The Tribunal has taken the monthly income of Rs.1,500/= and has thereafter determined the average prospective income at Rs.2250/= and after deducting 1/3rd from the same, has fixed the dependency loss at Rs.1250/= p.m. i.e. Rs.15,000/= per annum. After applying multiplier of 12, the Tribunal has determined the dependency loss at Rs.1,80,000/=. Obviously the monthly income available to the dependents as determined by the Tribunal at Rs.1250/= is erroneous in as much as it is purely a mathematical error committed by it. 1/3rd of Rs.2,250/= would be Rs.750/=; instead the Tribunal has calculated it to be Rs.1,250/=. On the basis of Rs.750/= the annual loss of dependency benefit available to the dependents would be Rs.9,000/= and multiplied by 12 years, it would be much less than Rs.1,80,000/=. However, as in the earlier case considering the age of the parents of the deceased and in particular of the mother, the multiplier of 12 applied by the Tribunal clearly appears to be erroneous. Even if it is considered in the light of Schedule-2 to Section 163-A, in our considered opinion, it ought to have been 15 instead of 12 years. If the annual loss of dependency benefit of Rs.9,000/= is multiplied by 15, it would come to Rs.1,35,000/=. In the present case, the Tribunal has awarded Rs.15,000/= towards mental shock and agony suffered by the claimants on account of the death of their young son. It is, in our opinion, on a lower side considering the present day trend it ought to have been Rs.20,000/=. We, therefore, determine amount of Rs.20,000/= under that head. It is also in evidence, as submitted by Mr. Bhatt that the deceased did not expire immediately but he expired on way while he was being brought to Ahmedabad. The Tribunal has not taken into account this fact and not awarded any amount under the head of pain, shock and suffering of the deceased. There is some substance in the submission made by the learned advocate. When there is evidence to the effect that the death was not instantaneous, the person who has received such serious injuries is likely to suffer the agony till the time he lives and that suffering ought to have been compensated by the Tribunal, which it has not done. In our opinion, Rs.5,000/= also be awarded under the said head. Further the Tribunal has awarded Rs.2,500/= on account of funeral expenses and Rs.2,500/= for the transport vehicle, etc. In our opinion, the same is not required to be disturbed. Thus, on the aforesaid basis, if the amounts under the different heads are calculated, the amount of compensation would be Rs.1,65,000/= in place of Rs.2,00,000/=. Thus, in our opinion, the just and proper compensation awardable to the claimants would

be Rs.1,65,000/= inall.

6.3. That brings us to the question of determining the compensation in M.A.C.P. No. 323/1992 i.e. First Appeal No. 622/2002, as according to Mr. Shelat, the compensation determined by the Tribunal is erroneous and is much on a higher side. According to him, considering the fact that the age of the claimant at the time of giving evidence was stated to be 65 years, at the time of accident she would be of the age of 59 years and, therefore, the multiplier of 8 would have been proper instead of the multiplier of 12 taken by the Tribunal. As against that, Mr. Hakim has submitted that considering the evidence on record, the Tribunal has erroneously held that the deceased was also responsible for the accident to the extent of 20% and the compensation actually awardable to the claimant ought not to have been curtailed by 20%.

6.3.1. If the evidence is perused carefully coupled with the discussion of the Tribunal on this aspect contained in para. 34 of the judgment, it clearly appears that the finding given by the Tribunal is erroneous and dehors the facts on record. It is surprising that the Tribunal after holding that the opponent i.e. the present appellant has failed to establish beyond doubt the negligence of the deceased, has come to the conclusion that the deceased was negligent to the extent of 20%. The reason assigned for this conclusion is that the person driving the scooter i.e. the deceased of this case had stopped his vehicle on the highway and he was having talks with the others, who all happened to be the college going students. We fail to understand from this fact alone how one can come to the conclusion that the deceased was negligent even to the extent of 20%. The documentary evidence in the form of Panchnama clearly shows that the offending vehicle was totally at fault as it had knocked down the persons who were standing on the edge of the road on their correct side. Merely because they were standing there and talking would not mean that they were negligent. It is also a matter of surprise that merely because the deceased owned the scooter and just prior to the extent he was riding the scooter, the Tribunal has held him guilty of being negligent to the extent of 20% and it has exonerated the others on this count. The record shows that the scooter was static at the time when the accident took place and the victims were merely standing on the edge of the road and chatting. If that be so, there was no reason for the Tribunal to hold the deceased guilty of contributory negligence. That finding is absolutely

erroneous and it is deserved to be set aside. Further that looking to the fact that the scooter dragged to the extent of 39 ft. shows that the offending vehicle was being driven in excessive speed and if the driver of that vehicle knocks down the persons standing on the edge of the road, it can be not only be held to be rash but also negligent. Therefore, in our opinion, the driver of the offending vehicle was 100% liable for causing the accident in question and no liability to any extent could have been fixed on the deceased on that count.

6.3.2. The submission of Mr. Shelat with regard to the multiplier adopted by the Tribunal, in our opinion, is required to be accepted. It appears in the evidence of the son of claimant of this petition, who is also claimant of M.A.C.P. No. 536/1992 that the claimant was aged 65 years at the time of evidence was being recorded before the Tribunal. In that view of the matter, even at the time of accident which took place in the year 1992, she would have been of 59 years. Considering the aforesaid Schedule as guiding factor, the correct multiplier would be 8 and not 12 as applied by the Tribunal. However, considering the fact that the Tribunal has wrongly deducted the amount of compensation to the extent of 20% from the overall figure, that amount is required to be added. Further that the Tribunal has held that the income of the deceased could be taken at Rs.1500/= p.m. This conclusion has been arrived at by the Tribunal after holding that the claimant had not produced any evidence with regard to the income of the deceased. In our opinion, the Tribunal has misled itself on this aspect. There is hardly any dispute on the fact that the deceased was aged 22 years and that he was painting signboards and also doing other painting work. Naturally when the deceased was endowed with this art, his services would be availed of by his customers and that would generate the income atleast to the extent of Rs.1800/= to Rs.2000/= p.m. The figure of Rs.1500/= arrived at by the Tribunal is on a lower side and in our opinion, it ought to have been determined at Rs.800/= p.m. If the datum figure is arrived at on the basis of income of Rs.1800/=, the loss of dependency benefit would work out to Rs.900/= p.m. and Rs.10,800/= per annum. If it is multiplied by 8, the future loss of dependency benefit would work out to Rs.86,400/=. This calculation has been made on the basis of 1/3rd of the income awardable to the claimant. To add to this, would be the amount under the head of loss of expectation of life. In this case also, the Tribunal has awarded Rs.15,000/=, which in our opinion, is required to be increased to Rs.20,000/=, as done in other cases. To add to this,

Rs.2500/= on account of funeral charges as awarded by the Tribunal. That will bring the amount to Rs.1,08,900/= and to round up the figure it would be Rs.1,09,000/=, which in our opinion, would be the just and proper compensation.

6.4. That brings us to the last claim petition i.e. M.A.C.P. No. 536/1992 i.e. First Appeal No. 623/2002. This is a case of personal injury. The claimant has suffered permanent disability in respect of the entire body to the extent of 5%. The Tribunal after considering the evidence on record, has awarded Rs.49,200/= by way of compensation. As stated above, neither Mr. Shelat nor Mr. Hakim has much to say about the figure of compensation arrived at. In our considered opinion also the amount of compensation determined by the Tribunal is just and proper and we do not see any reason to interfere with the same. Mr. Shelat has cited before us the following decisions of the Apex Court and this Court on the aspect of the deductions to be made in the case where the dependents are the parents and the deceased has died unmarried and also on the question that the multiplier that has to be adopted in such cases i.e. by keeping in view either the age of the deceased or the age of the dependent whichever is lower.

i. H.S. Ahammed Hussain v. Irfan Ahammed reported in (2002) 6 S.C.C. p. 52,
ii. Donat Louis Machado v. L. Ravindra reported in 1999 ACJ p.1400, and
iii. Smt. Rafia Sultan v. O.N.G.C. reported in 1985 (2) G.L.R. p. 1315.

Since we have followed these decisions, there is no need for us to discuss them in this judgment. The rest of the directions with regard to cost and interest given by the Tribunal would remain as they are.

7. The net result of the aforesaid discussion is that First Appeal No. 620 of 2002 is dismissed with no order as to costs. The original claimants i.e. the respondents herein are entitled to receive sum of Rs.2,76,700/= with interest @ 9% p.a. from the date of the application till realization together with proportionate cost thereon. This would be after adjusting the amount already received by the claimants under No Fault Liability.

7.1. So far First Appeal No. 621 of 2002 is concerned, it is partly allowed. The original claimants

i.e. the respondents herein are entitled to receive sum of Rs.1,65,000/= with interest @ 9% p.a. from the date of the application till realization together with proportionate cost thereon. This would be after adjusting the amount already received by the claimants under No Fault Liability.

7.2. First Appeal No. 622 of 2002 as well as Cross Objections are partly allowed. The original claimant i.e. the respondent herein are entitled to receive sum of Rs.1,09,000/= with interest @ 9% p.a. from the date of the application till realization together with proportionate cost thereon. This would be after adjusting the amount already received by the claimants under No Fault Liability.

7.3. First Appeal No. 623 of 2002 is dismissed. Mr. Hakim does not press the Cross Objections as stated earlier. The original claimant i.e. the respondent herein is entitled to receive sum of Rs.49,200/= with interest @ 9% p.a. from the date of the application till realization together with proportionate cost thereon. This would be after adjusting the amount already received by the claimant under No Fault Liability.

7.4. The appellant is directed to deposit the aforesaid amounts before the Tribunal, if not deposited, within a period of 8 weeks from today.

7.5. The amounts deposited before the Registry of this Court in each appeal be now transmitted to the Tribunal forthwith.

In view of the above order, the Civil Applications for stay do not survive. Disposed of accordingly.

[KSHITIJ R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.